MISSOURI COURT OF APPEALS WESTERN DISTRICT

STATE OF MISSOURI EX REL. MOGAS PIPELINE LLC

APPELLANT,

v.

PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI, KEVIN GUNN CHAIRMAN, ROBERT CLAYTON III, JEFF DAVIS, TERRY JARRETT, AND ROBERT KENNEY, COMMISSIONERS

RESPONDENTS,

UNION ELECTRIC COMPANY D/B/A AMEREN MISSOURI

RESPONDENT.

DOCKET NUMBER WD75109 DATE: January 15, 2013

Appeal From:

Cole County Circuit Court

The Honorable Daniel R. Green, Judge

Appellate Judges:

Division One: Thomas H. Newton, Presiding Judge, Joseph M. Ellis, Judge and Gary D. Witt, Judge

Attorneys:

Gerard T. Carmody, David H. Luce, Teresa D. Pupillo and Lauren M. Wacker, St. Louis, MO, for appellant.

Jennifer L. Heintz, Jefferson City, MO, for respondent Public Service Commission Michael R. Tripp, Columbia, MO, for respondent Union Electric Company.

MISSOURI APPELLATE COURT OPINION SUMMARY

MISSOURI COURT OF APPEALS WESTERN DISTRICT

STATE OF MISSOURI EX REL. MOGAS PIPELINE LLC,

APPELLANT,

PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI, KEVIN GUNN CHAIRMAN, ROBERT CLAYTON III, JEFF DAVIS, TERRY JARRETT, AND ROBERT KENNEY, COMMISSIONERS.

UNION ELECTRIC COMPANY D/B/A AMEREN MISSOURI,

RESPONDENTS,

RESPONDENT.

No. WD75109 Cole County

Before Division One: Thomas H. Newton, Presiding Judge, Joseph M. Ellis, Judge and Gary D. Witt, Judge

MoGas Pipeline Inc. ("MoGas") challenges the Public Service Commission's ("Commission") ruling that its underlying complaint relating to unauthorized ratemaking was barred because of collateral estoppel and because the Commission did not have jurisdiction over two pipelines that are now subject to federal regulation. MoGas challenges the interpretation or application of a Revised Rule and Order ("RRO"), arguing that the interpretation or application of the RRO was unconstitutional. MoGas asserts three points on appeal. First, MoGas argues that the issue was not barred by collateral estoppel because the constitutionality of the interpretation or application of the RRO had not yet been considered. Second, MoGas argues that the Commission had jurisdiction over the cause, even though the two former pipelines at issue are now subject to federal regulation. Third, MoGas argues that the circuit court should have considered the issue on its merits.

AFFIRMED

Division One holds:

MoGas's complaint indicates that its arguments are a collateral attack on the RRO. The lawfulness of the tariffs in the RRO has already been determined in an earlier action that has become final. Interpreting section 386.270 to allow the lawfulness of tariffs to be challenged at any point after a Commission order has become final would allow parties multiple chances to attack an order. This would violate section 386.550's prohibition against collateral attacks.

Because the issue of collateral estoppel is dispositive, we do not reach the merits of MoGas's other two points on appeal.

Opinion by Gary D. Witt, Judge

January 15, 2013

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